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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/757,537

01/15/2004

Jay Endre

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EXAMINER

NGUYEN, CHI Q

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

05/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,537

Applicant(s)

ENDRE, JAY

Examiner

Chi Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 8-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121.

I. Claims 8-19, drawn to a method of repairing a flue liner in a chimney, classified in class 52, subclass 741.4.

II. Claims 1-7, drawn to an apparatus for repairing irregularities in a chimney flue liner, classified in class 425, subclass 11.

The inventions I and II are related as process of making and product made. The inventions are distinct if either of the following can be shown:

(1) that the process as claimed can be used to make other and materially different product or

(2) that the product as claimed can be made by another and materially different process.

For instant case, the apparatus claims could be made by a method different than that group I such as inserting a metal layer on top of an existing flue liner.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purpose as indicated is proper.

During a telephone conversation with Mr. Dolph Torrence on 4/17/2007 a provisional election was made to group II (claims 1-7) with traverse. Affirmation of this election must be made by application in replying to this Office action. Claims 8-19 withdrawn from further consideration by the examiner, 37 CFR 1.42(b), as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,253,813 to Farrell, Jr.

Claim 1:

Farrell discloses an apparatus for repairing irregularities in a chimney flue liner (see col. 1, lines 7-16) comprising an applicator 48 having a geometrically solid configuration with an upper end and a lower end opposite said upper end, and a lifting line attached to the upper end of said applicator (see Fig. 9) for drawing said applicator through the chimney flue liner and distributing a mortar therein. Farrell discloses the basic structures for the apparatus for repairing irregularities in a chimney flue line as stated but silent to disclose the applicator is made out of a resilient foam material. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such an applicator is made out of a resilient foam material to make smooth new surfaces and preventing a damage to old surfaces. Furthermore, applicant has not disclosed the criticality of this feature.

Claim 2:

Further including a draw down line extending from the lower end of said applicator (see Fig. 9).

Claims 1, 3, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,415,269 to Fraser.

Claim 1:

Fraser discloses an apparatus for providing a reinforced foam lining for well bore holes comprising an applicator 63 having a geometrically solid configuration with an upper end and a lower end opposite said upper end, and a lifting line attached to the upper end of said applicator (see Fig. 1) for drawing said applicator. Fraser discloses the basic structures for the apparatus as stated but silent to disclose the applicator is made out of a resilient foam material. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such an applicator is made out of a resilient foam material for preventing damage to applicable surfaces. Furthermore, applicant has not disclosed the criticality of this feature.

Claim 3:

Further including an electrical power 3 that could capable of vibrating when the power turned on and it disposed within said applicator (Fig. 1).

Claim 4:

Further including a rigid housing 1 surrounding and containing said vibrator, said applicator 63 substantially surrounding and encasing said housing 1, said lifting line being indirectly connected to said housing.

Claim 7:

Further including a lifting line winch 7 disposed above said applicator and communicating therewith by said lifting line.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,415,269 to Fraser in view of US Patent No. 4,253,813 to Farrell, Jr. Fraser discloses an apparatus for providing a reinforced foam lining for well bore holes comprising an applicator 63 having a geometrically solid configuration with an upper end and a lower end opposite said upper end, and a lifting line attached to the upper end of said applicator (see Fig. 1) for drawing said applicator. Fraser discloses the basic structures for the apparatus as stated but silent to disclose the applicator is made out of a resilient foam material. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such an applicator is made out of a resilient foam material for preventing damage to applicable surfaces. Furthermore, applicant has not disclosed the criticality of this feature, an electrical power 3 that could capable of vibrating when the power turned on and it disposed within said applicator (Fig. 1), a rigid housing 1 surrounding and containing said vibrator, said applicator 63 substantially surrounding and encasing said housing 1, said lifting line being indirectly connected to said housing, and a lifting line winch 7 disposed above said applicator and communicating therewith by said lifting line. Claims 2 and 5:

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Fraser discloses basic structures for an apparatus as stated but does not teach expressly a draw line extending from the lower end of said applicator. Farrell teaches an apparatus for applying a flowable coating material to the interior of stack including a draw down line extending from the lower end of applicator 48 (see Fig. 9). At the time of the invention, it would have been obvious to one having an ordinary skill in the art to combine Fraser's apparatus with Farrell for a draw line extending from the lower end of the applicator for guiding straight while moving thus applicable material would accurate applied.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,415,269 to Fraser.

Claim 6:

Fraser discloses basic structures for an apparatus as stated but and including a foam device having perforated pipe so that the foam when generated may flow through the perforations thus coating over the apparatus but does not teach expressly an elastomer coating disposed over said applicator. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made. Furthermore, applicant has not disclosed the criticality of this feature.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached at (571) 272-6842.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.


CQN
4/25/2007


Jeanette Chapman
Primary Examiner